

Message Text

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C O N F I D E N T I A L BERLIN 1628

E.O. 11652: GDS

TAGS: PGOV, WB, GW, GE, UR

SUBJECT: BRUECKMANN

REFS: STATE 202763

1. FOLLOWING BELOW FOR DEPARTMENT'S CONSIDERATION ARE DRAFT
TALKING POINTS PREPARED FOR USE WITH THE SOVIET:

2. --THE ALLIES UNDERSTAND THEIR RESPONSIBILITIES UNDER
THE QA IN RESPECT TO THE BRUECKMANN AFFAIR AND HAVE FULFILLED
THEM PRIOR TO THE SOVIET STATEMENT (STATE 95966). THROUGH-
OUT THE AFFAIR THE ALLIES HAVE HAD ONLY ONE INTEREST: TO
INSURE THAT NOTHING THEREIN EFFECTED ANY CHANGE IN THE
RELATIONSHIP OF THE FEDERAL CONSTITUTIONAL COURT TO BERLIN
AND THEREBY IN THE RELATIONSHIP OF THE FRG TO BERLIN. TO
THIS END THE ALLIES HAVE CONSISTENTLY REAFFIRMED THE
POSITION, TO WHICH REFERENCE WAS MADE IN THE LETTER OF THE
THREE AMBASSADORS CONVEYING TO THE FEDERAL CHANCELLOR THE
TEXT OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971,
THAT THE FEDERAL CONSTITUTIONAL COURT HAS NO JURISDICTION
IN RELATION TO BERLIN.

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--EXCEPT FOR THIS POINT, THE DETERMINATION OF WHETHER FRAEULEIN BRUECKMANN IS RETURNED TO THE GDR IS PURELY A MATTER TO BE RESOLVED BY THE COMPETENT GERMAN AUTHORITIES IN ACCORDANCE WITH THE LAW IN FORCE IN BERLIN. THIS THE BERLIN AUTHORITIES ARE IN THE PROCESS OF DOING.

3. IN THE EVENT THAT SOVIETS QUESTION SPECIFICALLY THE PROCEDURES UNDER WHICH THE BERLIN AUTHORITIES ACTED, WE MIGHT ALSO SAY:

--THE BERLIN STAATSANWALT HAS ACTED PURSUANT TO A LAW TAKEN OVER IN BERLIN IN ACCORDANCE WITH ESTABLISHED PROCEDURES. NEITHER THE FACT THAT THE LAW HAS BEEN ADOPTED IN BERLIN NOR ANY DECISIONS TAKEN UNDER IT CAN BE DEEMED IN ANY WAY TO BE CONTRARY TO THE QA.

4. IF THE SOVIETS FOCUS SPECIFICALLY UPON THE FACT THAT THE NEW LAW PROVIDES FOR THE POSSIBILITY OF THE BUDESGERICHTSHOF REVIEWING A DECISION OF THE BERLIN KAMMERGERICHT IN A FUTURE EXTRADITION CASE, WE MIGHT SAY:

--THE PROVISION OF THE LAW PROVIDING THE POSSIBILITY OF REVIEW OF A BERLIN KAMMERGERICHT DECISION BY THE BUNDESGERICHTSHOF MERELY BRINGS THE 1953 LAW ON INNER-GERMAN COOPERATION IN CRIMINAL MATTERS INTO CONFORMITY WITH THE GREAT BULK OF CRIMINAL LEGISLATION LONG IN FORCE IN BERLIN. IT IS FULLY CONSISTENT WITH THE QA. THE ALLIES OF COURSE HAVE TAKEN AND WILL CONTINUE TO TAKE SUCH STEPS AS MAY BE NECESSARY TO ENSURE THAT THE EXERCISE OF JURISDICTION BY COURTS PROVIDED FOR UNDER LEGISLATION ADOPTED IN BERLIN IN NO WAY CONTRAVENES THE LEGAL POSITION WITH RESPECT TO THE LACK OF COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT IN BERLIN MATTERS.KLEIN

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